

JOHNNY EARP; 12-6-2024

ORAL AND VIDEOTAPED DEPOSITION OF
JOHNNY EARP
DECEMBER 6, 2024



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1 DEPOSITION OF JOHNNY EARP, produced as a witness at
2 the instance of HTLF BANK as Successor to First Bank &
3 Trust and duly sworn, was taken in the above-styled and
4 numbered cause on the 6th day of December, 2024, from
5 9:33 a.m. to 2:38 p.m., in person before Charles Walker,
6 CSR in and for the State of Texas, reported by machine
7 shorthand, at the law offices of McWhorter Cobb and
8 Johnson, LLP, 1722 Broadway, Lubbock, Texas 79401,
9 pursuant to the Federal Rules of Civil Procedure and the
10 provisions stated on the record or attached hereto.

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1 A P P E A R A N C E S

2 FOR HTLF BANK, AS SUCCESSOR TO FIRST BANK & TRUST:

3 John H. Lovell
4 Attorney at Law
LOVELL ISERN & FARABOUGH, LLP
5 112 SW 8th Avenue, Suite 1000
Amarillo, Texas 79101-2314
john@lovell-law.net

6 FOR AGTEXAS FARM CREDIT SERVICES, AGTEXAS, PCA, AND
7 THORLAKSON DIAMOND T FEEDERS, LP:

8 David L. LeBas (Via Zoom)
9 Attorney at Law
NAMAN HOWELL SMITH & LEE, PLLC
10 8310 N. Capital of Texas Hwy, Suite 490
Austin, Texas 78731
dlebas@namanhowell.com

11 FOR 2B FARMS:

12 Timothy T. Pridmore
13 Todd J. Johnston
14 Attorneys at Law
McWHORTER, COBB & JOHNSON, LLP
1722 Broadway
15 Lubbock, Texas 79408
tpridmore@mcjllp.com
tjohnston@mcjllp.com

16 FOR INTERVENORS IN STATE COURT ACTION:

17 John F. Massouh (Via Zoom)
18 Abel Leon
19 Attorneys at Law
SPROUSE SHRADER SMITH, PLLC
20 P.O. Box 15008
Amarillo, Texas 79105-9158
john.massouh@sprouselaw.com

21 FOR SHAWN RAGLAND:

22 Dallas Flick (Via Zoom)
23 Attorney at Law
CRAWFORD, WISHNEW & LANG, PLLC
24 1700 Pacific Avenue, Suite 2390
Dallas, Texas 75201

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1 FOR RABO AGRIFINANCE :

2 Heath Hendricks
3 Attorney at Law
4 UNDERWOOD LAW FIRM, PC
5 P.O. Box 9158
6 Amarillo, Texas 79105-9158
7 heath.hendricks@uwlaw.com

8 FOR MECHANICS BANK:

9 Javon Johnson (Via Zoom)
10 Attorney at Law
11 HUSCH BLACKWELL, LLP
12 1900 North Pearl Street, Suite 1800
13 Dallas, Texas 75201
14 Rick.illmer@huschblackwell.com

15 FOR RIDGEFIELD CAPITAL GROUP:

16 Amber Miller
17 Attorney at Law
18 CRENSHAW DUPREE & MILAM, LLP
19 4411 98th Street
20 Lubbock, Texas 79424
21 amiller@cdmlaw.com

22 FOR CHAPTER 7 RIES TRUSTEES:

23 Hudson M. Jobe (Via Zoom)
24 Attorney at Law
25 JOBE LAW PLLC
6060 North Central Expressway, Suite 500
Dallas, Texas 75206
Hjobe@jobelawpllc.com

19 ALSO PRESENT:

20 Steve Payton, Videographer
21 SIGNATURE PRODUCTIONS, LTD.
22 5331 85th Street
23 Lubbock, Texas 79724
24 Phone: 806-744-6288
25 Steve-payton@sbcglobal.net

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<p>1 we can just to fill in a few things. I think from your 2 prior testimony, as of last month you're officially 3 retired?</p> <p>4 A. Officially, yes.</p> <p>5 Q. Congratulations.</p> <p>6 A. November 15th.</p> <p>7 Q. Congratulations.</p> <p>8 A. Yeah.</p> <p>9 Q. What did you do to prepare for this deposition 10 today?</p> <p>11 A. The -- I reviewed the documents that I received 12 that I went over earlier today, the e-mails to Jason 13 Swann, basically, that kind of information.</p> <p>14 Q. And this -- And I'm not asking what you talked 15 about, but did you have the opportunity to speak with 16 Mr. Lovell or someone from his firm?</p> <p>17 A. On a brief, brief basis. No significant time.</p> <p>18 Q. And you're not represented by an attorney?</p> <p>19 A. I am here as a individual.</p> <p>20 Q. And are you here as representative of the bank 21 as well?</p> <p>22 A. Before they -- Before the merger -- Bank of 23 Heartland is in the middle of a merger between Heartland 24 and UMB, University -- or Missouri Bancshares, United 25 Missouri Bancshares. They wanted someone to basically</p>	<p>61</p> <p>1 Q. And in fact, that's why Mr. Swan brought you in 2 to oversee and help a few things related to the 2B Farms 3 or Bo Robinson loans; right?</p> <p>4 A. He brought me in to look over what he had 5 completed to see if it would be what a -- what I would 6 see when I was only looking at a loan. I pointed out a 7 few things and I didn't know how he had it calculated 8 and he explained it to me, so yes.</p> <p>9 Q. You were not the loan officer for Bo Robinson; 10 were you?</p> <p>11 A. Never. Never was.</p> <p>12 Q. And where there was -- We say Bo Robinson or 2B 13 Farms, can we understand we're talking about the same 14 customer?</p> <p>15 A. Same individual, yes.</p> <p>16 Q. You used a word earlier. I want to make sure. 17 You'd used the word credits when you were talking about 18 responsible for credits at the bank. Is that the same 19 as customer?</p> <p>20 A. Customers, loans, loans or credits. That's the 21 way we refer to them.</p> <p>22 Q. And would you agree that bank officers need to 23 use ordinary and reasonable care in handling the 24 accounts?</p> <p>25 A. Yes.</p>
<p>62</p> <p>1 -- Meg Killian, who is the attorney with the bank, 2 wanted someone to speak on behalf of the bank. I guess 3 I drew the black bean.</p> <p>4 Q. If you had to be in a room full of lawyers most 5 people would probably agree with you that.</p> <p>6 A. And not that I -- Not that I know anything 7 about it. The only thing, I know about cattle.</p> <p>8 Q. Yes, sir. And I want to ask you just a couple 9 of background questions. You've explained your 10 expertise in the cattle and the ag lending business; 11 correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And then you addressed that in your opinion Mr. 14 Ragland did not have that expertise?</p> <p>15 A. Shawn expressed it to me personally that he 16 didn't have the expertise in lending money to -- on 17 livestock.</p> <p>18 Q. And then Mr. Swann, who was your supervisor, 19 also had that knowledge about Shawn?</p> <p>20 A. Oh, yes, yes. And, in my opinion. I never 21 asked him directly, but in my opinion.</p> <p>22 Q. And from the e-mails that you went over earlier 23 today, Mr. Swann and Mr. Ragland basically admitted the 24 same themselves; did they not?</p> <p>25 A. I believe that's what it indicated.</p>	<p>64</p> <p>1 Q. And in fact you gave testimony about that 2 earlier today; did you not?</p> <p>3 A. Yes, sir.</p> <p>4 Q. I want to briefly discuss the names of the 5 bank; all right? So now I'm going to focus. We're not 6 talking about Rabo. We're not talking about Mechanics 7 Bank; okay? I'm talking about your banks --</p> <p>8 A. Yes, sir.</p> <p>9 Q. -- if that makes sense? When you first started 10 in the ag lending business you were working with 11 AimBank; is that correct?</p> <p>12 A. When I first started ag lending? I was with 13 Farmer's Home Administration. Then.</p> <p>14 Q. And then you went to Wells --</p> <p>15 A. Norwest Bank merger to -- or merged with Wells 16 Fargo Bank. Then I retired on Friday from Wells Fargo 17 and started working on Monday at AimBank.</p> <p>18 Q. And you were with AimBank for 21 years?</p> <p>19 A. No, I was at Wells Fargo for 21 years.</p> <p>20 Q. Okay. Okay.</p> <p>21 A. AimBank was about five years.</p> <p>22 Q. Okay.</p> <p>23 A. AimBank/First Bank & Trust/Fairland was about 24 five years.</p> <p>25 Q. And that's where I'm going.</p>

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1 Q. And then on down under Paragraph 7 there is a 2 sub-paragraph c, Deposits; do you see that? 3 A. Yes, sir. 4 Q. Within that it references another document and 5 called the Regulation CC Funds Availability Disclosures? 6 A. Yes, sir. 7 Q. And that that is incorporated into the policies 8 of the bank; correct? 9 A. Correct. 10 Q. And it relates to the availability of the 11 deposited funds and when they're accredited to your 12 account; is that right? 13 A. When they're -- Yes. 14 Q. And just for reference, if you can turn to the 15 last two pages of Exhibit 70. 16 A. (Witness complies.) Okay. 17 Q. And does that appear to be a copy of the 18 Regulation CC Funds Ability Disclosure? 19 A. Yes, sir, that's the Available to Disclosure, 20 yes, sir. 21 Q. Okay. And so this is again a policy of the 22 bank; correct? 23 A. Correct. 24 Q. If we take a look at the first page where you 25 were of the dis -- I'm going to call it the Regulations	81	1 Q. And the exceptions that goes up to seven 2 business days if the deposit checks total more than 3 \$5,525; do you see that? 4 A. Yes, sir. 5 Q. Now, in the Bo Robinson case and the exhibits 6 you looked at a moment ago and you referenced during the 7 month of February there was a series of checks; were 8 there not? 9 A. Yes, sir. 10 Q. And in those, all those checks were dealing 11 with significant numbers of multiple millions of 12 dollars; were they not? 13 A. I believe all the checks were in excess of a 14 million dollars that I saw on the list. 15 Q. And so clearly those checks during that time 16 period would have been more than the \$5,525 exceptions 17 here; right? 18 A. Yes, sir. 19 Q. So, in that case, under the bank's policy, it 20 should not have given immediate credit for those checks; 21 is that right? 22 A. That's right. 23 MR. JOHN LOVELL: Objection, misstating the 24 language of the document. 25 Q. (BY MR. TIMOTHY PRIDMORE) Did you understand	83
1 CC? 2 A. Yes, sir. 3 Q. This is talking about how this document is 4 applicable to Heartland Financial, like you said; 5 correct? 6 A. Yes, sir. 7 Q. Under the first main paragraph, under Your 8 Ability to Withdraw Funds at the member bank, does it 9 say our policy is to make funds from your cash and 10 checks deposits available to you on the first business 11 day after the day we received your deposit? 12 A. That's what this statement says, yes. 13 Q. So that's not the an instant credit -- 14 A. No. 15 Q. -- customer; is it? 16 A. No. 17 Q. It doesn't give immediate availability to the 18 customer to take those funds; does it? 19 A. No. 20 Q. And if we move down, as it were, to 21 sub-paragraph it says longer delays may apply? 22 A. Yes, sir. 23 Q. And then it gives examples of when additional 24 time, more than the one business day? 25 A. Yes, sir.	82	1 my question? 2 A. Sir, repeat. 3 Q. If a check -- If the check has been deposited 4 for at least a million dollars, that is more than the 5 \$5,525 exception that's put forth on the FCC 6 regulations; correct? 7 A. That is larger than the 5,025, yes. 8 Q. And if that is the case the bank should impose 9 a longer hold period before it gets credit, up to seven 10 days? 11 MR. JOHN LOVELL: Objection, you misstated 12 the language of the document. 13 Q. (BY MR. TIMOTHY PRIDMORE) You can answer it, 14 sir. 15 A. You can put a longer hold period. You may. 16 Q. And in this case do you know if the bank did? 17 A. I have no idea. 18 Q. Were you making any of those decisions? 19 A. No, sir. 20 Q. The bank clearly had the ability to make that 21 decision according to its own policy; correct? 22 A. According to the policy, yes, you can put a 23 hold. 24 Q. So whether it be Mr. Ragland, Mr. Garland, Mr. 25 Swann, any of them could have done that; correct?	84

21 (Pages 81 to 84)

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1 question. We're all talking about this at one time. 2 MR. JOHN LOVELL: I just want to make sure 3 it's clear who's buying and who's actually doing the 4 selling. 5 MR. TIMOTHY PRIDMORE: And I'm glad you 6 clarified that. Thank you. 7 Q. (BY MR. TIMOTHY PRIDMORE) Can you give your 8 testimony of what you believe the series of checks that 9 we're about to go over are concerning? 10 A. These checks that we're looking at represent 11 the proceeds from sales of cattle that McClain Feed Yard 12 sold that were Bo Robinson's cattle, from what I -- what 13 I understand. 14 Q. Up at the very top of the first page it says 15 "Refer to Maker". What does refer to maker mean to you? 16 A. I don't -- I don't see that. They were -- They 17 were only -- I have no idea what that is. I would guess 18 we're going to have to go -- It's referring it back to 19 the bank. 20 Q. Back to Mechanics Bank? 21 A. Back to Mechanics Bank probably because the 22 check wasn't any good. That's what I'm guessing, is 23 that they're sending it back. 24 Q. And -- What you -- Common knowledge is when 25 it's a returned check, bad check; is that right?	105	1 Q. And a significant amount of money, \$2.5 million 2 A. Yes. 3 Q. -- correct? 4 A. Yes. 5 Q. Were you -- The signature on the McClain Farm 6 Account on this first page again is Megan Goad; do you 7 see that? 8 A. I see that, yes. 9 Q. Do you understand that to be Brian McClain's 10 daughter? 11 A. I do not know that. I know that his family 12 worked in the business. That's all that I -- 13 understand. 14 Q. Were you aware that McClain would send multiple 15 pre-signed blank checks to First Bank & Trust to use in 16 this -- in this cattle operations we've been discussing? 17 A. Have no knowledge of that. 18 Q. Would that be unusual? 19 A. It was quite unusual. 20 Q. Because McClain Farms Account, Inc. is not a 21 customer per se of the First Bank & Trust; is it not? 22 A. They have no -- They are no customer of the 23 bank that I'm aware of. 24 Q. And so if McClain Farms, Inc. is sending a	107
1 A. Returned check. 2 Q. Does this appear to be a form that the back 3 office of First Bank & Trust is generating? 4 A. This looks like something that -- It was not 5 generated at the local branch, I can assure you that. 6 Q. So, is that -- When you say back office, would 7 that be the back office of the bank? 8 A. Of the bank, yes. 9 Q. And then like on Page 2 of this exhibit, that's 10 the back of this check; do you see that? 11 A. Yes. 12 Q. All right. And there's no endorsement 13 signature on that; is there? 14 A. No. That's not uncommon. 15 Q. As a general practice when a check is deposited 16 doesn't the customer endorse the check? 17 A. Generally they do. There are occasions when a 18 customer has a large amount of checks and there's times 19 that the bank will stamp it like an endorsement and it's 20 guaranteed like an endorsement missing. There's stamps 21 that we would normally be put on. I don't know why 22 there was no stamp on the check or no one endorsed the 23 check. Can't speak to that. But I don't know why 24 somebody couldn't have done something. There's only one 25 check that day.	106	1 pre-signed blank check to First Bank & Trust to hold in 2 a desk drawer, that's unusual; is it not? 3 A. Very unusual. I mean, I wouldn't send any 4 forms like that. That just -- 5 Q. That's not normal? 6 A. Normal course of business, no. 7 Q. What about if the bank employee filled out the 8 pay to the order of and the amount of the check? That 9 would not be normal either; would it? 10 A. That would not be normal. How would -- How 11 would they know? 12 Q. Were you aware that First Bank & Trust employee 13 Rebecca Fernandez was filling out pre-signed checks for 14 McClain Farms account and depositing them into the 2B 15 Farms account? 16 A. No knowledge of that. 17 Q. Do you have knowledge if Shawn Ragland knew 18 about that? 19 A. I have no knowledge of that, either. 20 Q. Did, in any of your dealings with bank officers 21 in talking about the McClain situation, did you discuss 22 that with any other bank officers? 23 A. First I ever heard of that is today. 24 Q. That's not something that a similarly situated 25 bank would do traditionally; is it?	108

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1 A. No. 2 Q. So, what we can see, at least as to the first 3 check on April the 4th of 2023 on Exhibit 73 is Bo 4 Robinson did not endorse it; correct? 5 A. That's correct. 6 Q. It was deposited into the 2B Farms account; 7 correct? 8 A. I don't know what his account number is, but if 9 it -- that's -- 10 Q. I'll represent to you it is. 11 A. Okay. 12 Q. Were you aware that First Bank & Trust was 13 given immediate credit to 2B Farms accounts for these 14 checks? 15 MR. JOHN LOVELL: Objection, misstates the 16 facts. 17 THE WITNESS: I have no knowledge as to how 18 the checks were -- availability of the funds of the 19 checks. 20 Q. (BY MR. TIMOTHY PRIDMORE) Would it surprise 21 you if the bank made these funds immediately available? 22 A. In the normal course of business when we're 23 dealing with reputable customers such as let's just say 24 Cactus Feeders or Feed -- I mean, Packers, Packers, 25 checks that come in for cattle are typically made	109	1 MR. TIMOTHY PRIDMORE: I was waiting for 2 that. 3 MR. JOHN LOVELL: You're welcome. 4 Q. (BY MR. TIMOTHY PRIDMORE) And if we look 5 through, without going through everything -- So we just 6 went through the first check of April the 4th and then 7 if we go to Page 3 and 4, we see similar amount checks, 8 \$2.5 million done on April the 5th, 2023; correct? 9 A. Yes, sir. 10 Q. And you see the same signatures and the same 11 handwriting on both of those checks; right? 12 A. I'm not a handwriting expert, but it looks 13 similar to me. 14 Q. And again no endorsement; correct? 15 A. Correct. 16 Q. Then we go to the third check that was April 17 the 6th of 2023 and a similar \$2.5 million amount; 18 correct? 19 A. Yes. 20 Q. And my same questions related to those, would 21 your answer be the same? 22 A. It would be the same, yes. All checks in this 23 series appear the same. 24 Q. All right, that's the three. And then if you 25 go back to the next, where it looks like this	111
1 available the same day. That's all -- Let's just use 2 cotton checks for PCCA. Those are -- Typically we do 3 not put holds on those deposits. But, it's common in ag 4 lending that the -- our crop insurance checks or 5 whatever, we just typically do not put holds on those 6 checks. 7 Q. Despite you had testified earlier today? 8 A. The policy says we do. The lender has 9 discretion or the officer on the account has discretion. 10 And when you are dealing with people that you've done 11 business with for years, like Cargill or somebody like 12 that that's -- you don't -- we don't typically hold the 13 checks. I don't know what their relationship was there 14 at the bank. 15 Q. But what we do know is McClain Farms, Inc. did 16 not have a direct customer relationship with the bank? 17 A. That's true. 18 Q. Do you know if First Bank & Trust ever 19 contacted Mechanics Bank to verify these funds? 20 A. Have no knowledge. 21 Q. Have you seen any documents that suggest they 22 did? 23 A. No. 24 Q. I haven't either. 25 MR. JOHN LOVELL: Objection to the comment.	110	1 (indicating)? 2 A. Uh-huh. 3 Q. You see this page right here? 4 MR. JOHN LOVELL: What check number. 5 MR. TIMOTHY PRIDMORE: Well, it's the same 6 check; it's just a double. 7 THE WITNESS: Same page. 8 MR. JOHN LOVELL: 7331? 9 Q. (BY MR. TIMOTHY PRIDMORE) From my looking at 10 it, it appears to be a page with the front and back, 11 just the same. They appear to be the same. 12 A. Well, this is actually the same as the first 13 check. 14 Q. That's what I'm saying; right? 15 A. Yes. 16 Q. Is it just that -- Is it in -- If you know, is 17 it in an archive way the way First Bank & Trust produces 18 it? 19 A. It is a -- You can have the option to print the 20 first page, then print the second page or you have the 21 option where you get both front and back printed on one 22 page. 23 Q. So. So, if I'm correct and if we look through 24 the three different checks, they are the same as the 25 first three we discussed earlier?	112

28 (Pages 109 to 112)

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<p>1 came up there.</p> <p>2 Q. Did Shawn go with you to Kentucky?</p> <p>3 A. Shawn went with me to Kentucky, yes, sir.</p> <p>4 Q. Do you have any knowledge about the actions Bo</p> <p>5 has taken to try to help secure funds for the bank?</p> <p>6 A. I have no knowledge of anything --</p> <p>7 Q. You weren't involved in any of that?</p> <p>8 A. I'm not involved in any of it.</p> <p>9 Q. Basically, would you -- would you agree that</p> <p>10 Shawn Ragland had the ability to oversee the Bo Robinson</p> <p>11 and McClain transactions and do other -- other things to</p> <p>12 protect the bank and Bo Robinson than what he did?</p> <p>13 MR. DALLAS FLICK: This is Dallas Flick,</p> <p>14 objection to form.</p> <p>15 THE WITNESS: Did he have the ability?</p> <p>16 MR. TIMOTHY PRIDMORE: Yes.</p> <p>17 THE WITNESS: He had the -- As far as I</p> <p>18 know, Shawn had the ability to not give immediate credit</p> <p>19 to a deposit coming in and he did not have to wire the</p> <p>20 funds out because there was basically no funds in the</p> <p>21 account to wire out so he was wiring uncollected funds.</p> <p>22 Q. (BY MR. TIMOTHY PRIDMORE) And they could have</p> <p>23 looked for an endorsement on the checks that were being</p> <p>24 deposited?</p> <p>25 A. Right. There was numerous things that could</p>	<p>125</p> <p>1 entities; correct?</p> <p>2 MR. DALLAS FLICK: This is Dallas Flick,</p> <p>3 objection to form.</p> <p>4 THE WITNESS: I had no idea that there was</p> <p>5 even any checks there. But I suppose he had that</p> <p>6 ability, if he -- if he knew about it.</p> <p>7 Q. (BY MR. TIMOTHY PRIDMORE) And the same thing</p> <p>8 with Rebecca Fernandez; correct?</p> <p>9 A. Now, like I say, I have no idea who was holding</p> <p>10 checks for -- unsigned checks from anywhere. I don't</p> <p>11 know if Bo Robinson held the checks or anybody held the</p> <p>12 checks. I don't -- I didn't know there were any checks</p> <p>13 out there.</p> <p>14 Q. But if they were held by the bank in a drawer</p> <p>15 and when invoices would come in Rebecca Fernandez would</p> <p>16 open a drawer, put the check out, and fill it out?</p> <p>17 A. No. Because that's --</p> <p>18 MR. DALLAS FLICK: This is Dallas Flick,</p> <p>19 object to the form.</p> <p>20 THE WITNESS: The invoices would have been</p> <p>21 being paid with a wire. These were on cattle sales.</p> <p>22 These checks that were coming in were for cattle sales.</p> <p>23 How do you know what cattle were being sold?</p> <p>24 Q. (BY MR. TIMOTHY PRIDMORE) And if they got the</p> <p>25 paperwork for that?</p>
<p>126</p> <p>1 have been done.</p> <p>2 Q. But they weren't; were they?</p> <p>3 A. The indication --</p> <p>4 MR. JOHN LOVELL: Objection.</p> <p>5 MR. DALLAS FLICK: This is Dallas Flick,</p> <p>6 objection to form.</p> <p>7 Q. (BY MR. TIMOTHY PRIDMORE) Do you know what due</p> <p>8 diligence the bank did on Brian McClain and his</p> <p>9 entities, if any?</p> <p>10 A. No knowledge.</p> <p>11 Q. Other than the inspection that you went up</p> <p>12 to Kentucky, do you know if the bank did any type of</p> <p>13 proactive actions related to the McClain accounts?</p> <p>14 MR. JOHN LOVELL: Objection, vague.</p> <p>15 THE WITNESS: The only thing that I know of</p> <p>16 is there's probably a freeze put on the account. I</p> <p>17 mean, that would -- That's calling for speculation on my</p> <p>18 part. I don't know what, anything that was done.</p> <p>19 Q. (BY MR. TIMOTHY PRIDMORE) And that would have</p> <p>20 been after the checks were run?</p> <p>21 A. Yeah.</p> <p>22 Q. Fair enough. Mr. Ragland could have stopped</p> <p>23 the holding of the authorized and signed -- Excuse me.</p> <p>24 Mr. Ragland could have stopped the process in which the</p> <p>25 bank was holding the pre-signed checking from McClain</p>	<p>128</p> <p>1 A. If they received the paperwork for the sale of</p> <p>2 the cattle, it'd still have to be highly irregular.</p> <p>3 Q. Mr. Earp, I appreciate you. You've been</p> <p>4 hearing a lot of attorneys talk and everything. We</p> <p>5 appreciate your time in coming out of retirement here</p> <p>6 today. Have you understood all the questions you've</p> <p>7 been asked --</p> <p>8 A. I have --</p> <p>9 Q. -- today --</p> <p>10 A. -- so far.</p> <p>11 Q. -- by all the attorneys?</p> <p>12 A. So far.</p> <p>13 Q. And have you answered them to the best of your</p> <p>14 knowledge and ability?</p> <p>15 A. To the best of my ability, yeah. I'm sure</p> <p>16 there's going to be more questions, but --</p> <p>17 Q. Well, I appreciate your time.</p> <p>18 A. Yes, sir.</p> <p>19 MR. TIMOTHY PRIDMORE: I pass.</p> <p>20 MR. JOHN MASSOUD: This is John Massoud. I</p> <p>21 have a number of questions. It's about 12:40. I don't</p> <p>22 know if the witness, we want to take a short lunch break</p> <p>23 or not? If we want to just push through just let me</p> <p>24 know.</p> <p>25 THE COURT REPORTER: I'd like to have a</p>